Fund held in trust by the United States for the North Carolina Cherokees.

EXPLANATION

OF THE

FUND HELD IN TRUST

BY

THE UNITED STATES

FOR

THE NORTH CAROLINA CHEROKEES.

BY WM. H. THOMAS.

WASHINGTON:
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1858.

To the Hon. ALFRED B. GREENWOOD,
Chairman of the Committee on Indian Affairs.

WASHINGTON, D. C., *February* 1, 1858.

SIR: As the representative of the North Carolina Cherokees, I beg leave to refer to a resolution introduced in the House of Representatives, by the Hon. T. L. Clingman, which passed, and is now under consideration of the committee. And by way of explanation to furnish the facts connected with the origin of the trust-fund therein referred to, and the objects designed to be attained by the resolution,

"*Resolved*, That the Committee on Indian Affairs inquire into the expediency of amending the fourth and fifth sections of an act, entitled, An act, making appropriations for the current and contingent expenses of the Indian Department, &c., approved 29th July, 1848, so as to regulate the payment of interest due to the North Carolina Cherokees, on funds held in trust for them by the United States under the said act, so as to estimate the interest on what remains due in each year ending on the 29th of July, agreeably to a census roll of said Indians. And in case of the death of any of the Indians, to estimate the interest to the time of payment, which, with the principal of $53 33, to be paid over to the legal representatives of such Indians remaining in the State of North Carolina at the time of payment. And in case of there being no heirs at law to receive it, then to pay over the same to the survivors of that portion of the tribe and their legal representatives, in accordance with the laws of the State."

So early as the year of 1783, the State of North Carolina passed an act to protect the Cherokee Indians residing within her chartered limits, and guaranteed the title of their lands designated by naturnal boundaries. The effect of which grant, agreeably to the decisions of the Supreme Court of the State, was, to vest the fee simple in the Indians as tenants in common while they continued on the land. (See 3d Hawks' Reports—page 151—Enchella vs. Welch.)

In 1808, as shown by the preamble to the Cherokee Treaty of 1817, the North Carolina Cherokees, known as the Upper Towns, and the Cherokees in Georgia and other States, known as the Lower Towns, became separated in policy. The former determined to remain permanently in the country they then occupied, to engage in the pursuits of agriculture and civilized life, and the latter preferred removing west of the Mississippi where game was more plenty. Each portion of the nation sent on delegations to make known to the President of the United

States the policy their people desired to adopt. President Jefferson promised to gratify the wishes of both. Those who wished to move west, were to be furnished with lands in that country to be the home of such of the tribe as might prefer to emigrate at any subsequent period, and no further cessions were to be required. But the State of Georgia claimed that the Government of the United States had stipulated to extinguish the Indian title within her chartered limits—urged the conclusion of a treaty, by which this object would be attained. Under this influence a treaty was drawn up at Washington city, under the direction of President Jackson, which formed the basis of the treaty of 1835. The President, knowing that the Cherokee tribe were advanced in civilization—that a large number of individuals, including the North Carolina Cherokees, were bitterly opposed to removal west, to conciliate them the 14th article of the proposed treaty, which finally became the 12th article of the treaty of 1835, was inserted. It provided, among other benefits of the treaty, that they should be entitled to commutation for removal and subsistence allowance of $53 33 each. The 12th article of the treaty of 1835, based on the foregoing, was read and explained by the United States Commissioner to the Cherokee people as containing the same provisions with regard to commutation for removal and subsistence, as was contained in the orignal propositions and intructions of the Government of the United States, with the addition of the provisions in favor of the pre-emption and reserative rights, as the report of the Commissioner, John F. Schermerhorn, published with the documents accompanying the treaty, prove. The North Carolina Cherokees, ascertaining that a treaty had been concluded with a small portion of the tribe who resided in Georgia, and who had passed under the dominion of that State, employed the undersigned to come on to the city of Washington to examine for them the provisions of the treaty, and, if necessary, to secure their rights—to remain in North Carolina with a fair and equal share of the proceeds of the sale of the lands—to obtain supplimental articles, or defeat its ratification. Upon making known to the Commissioner who negotiated the treaty, and also to the delegation who accompanied him to Washington the objects of his mission, they contended that these objects had already been provided for in the treaty, and this opinion was concurred in by the Commissioner of Indian Affairs. But to guard against the possibility of a construction being placed on the treaty different from the understanding at the time it was negotiated, a written explanation and agreement was drawn up and signed by the individuals who negotiated and signed the treaty. By this agreement it was provided,

That the Cherokees who remained in North Carolina, should have the use of the hunting ground, including a portion of the Great Iron mountain, adjacent to where they desired to form a settlement, and where they now live, reserved, under the treaty of 1791, until the country is settled. An explanatory article was also included in the agreement, which provided as follows:

"It is further agreed that one claim to which said Cheerokees, desiring to remain are entitled, by the 12th article of the New Echota Treaty, amounting to $53 33, intended to place them on terms of equality with those who chose to emigrate in two years from the ratification of the abovenamed treaty, who are allowed that sum for removal and subsistence, out of the money arising from the sale of the common property—*shall be placed by them on interest in the State Bank of North Carolina, or some other safe institution, &c.*,'—(See Sen. Doc. No. 120.)

Upon the suggestion of the Commissioner of Indian Affrairs, this agreement was laid before him to be submitted to the Secretary of War (Governor Cass) for his decision thereon. He, on the 4th July, 1836, decided that the North Carolina Cherokees without removal, were entitled to all the stipulations of the treaty.—(See his letter 4th July, 1836.) The North Carolina Cherokees under these circumstances, were induced to believe that the Government of the United States would carry out the treaty, as it was known to have been read, explained, and interpreted to and understood by the Indians—surrendered the lands claimed to have been ceded under the treaty, and purchased lands for themselves, as contemplated by the President with reference to the class that remained east. But when application was made to the Government of the United States for a compliance on her part, the officers of of the Government had been changed; and owing to this or some other cause it was refused and a new construction placed on the treaty, totally different from the manner it was known to have been understood by the Indians. In the meantime, the North Carolina Cherokees, shortly after the ratification of the treaty of 1835–'6 sent on to the General Assembly of the State a petition, setting forth their determination to remain in the State after the expiration of the two years allowed for the removal of the remaining portion of the tribe; and requested the passage of a law for their protection. This lead to the passage of the following act:

Be it enacted, &c., "That all contracts of every nature and description made after the eighteenth of May, one thousand eight hundred and thirty-eight, with any Cherokee Indian, or any person of Cherokee Indian blood, within the second degree, for an amount equal to ten dollars or more, shall be null and void, unless some memorandum thereof be made in writing and signed by such Indian, or person of Indian blood, or by some other person by him authorized, in the presence of two creditable witnesses, who shall also subscribe the same."—(*See act of* 1836–'37.)

But notwithstanding the passage of this act, which, under the circumstances, was virtually giving the sanction of the State to the Indians to remain within her limits, the General Government still refused to pay them their portion of the funds, or to place on interest the sum allowed under the 8th and 12th articles of the treaty of 1835–'6 for a commutation of removal and subsistence. The undersigned having represented to the North Carolina Cherokees that they would be entitled to this allowance, as well as all other benefits of the treaty, felt called on to prevent a construction being placed on it which would deprive them of nearly all its benefits. Application was made to the Commissioner of Indian Affairs, who refused to make the allowance. An appeal was taken to the Secretary of War, who refused to reverse the decision of the Commissioner. An appeal was then taken to President Van Buren; he expressed an opinion in favor of the Indians, but went out of office without leaving any decision on record. Application was subsequently made to President Tyler, and he referred the question back to the Indian Office, and by the time that adverse decisions were made, and appeals taken and brought up to the President for his action, his term had expired, and President Tyler left the office without making any decision.

With a hope of enlisting, at least, the delegation in Congress from North Carolina in favor of her Indian population, application was made to the Legislature of the State, which lead to the passage, by a unanimous vote of both Houses, of the following resolution:

Resolutions relating to the Cherokee Indians:

Resolved, That our Senators and Representativest in the Congress of the United States are hereby requested to use their influence in favor of obtaining a speedy settlement of the just claims of the Cherokee Indians residing in this State, &c.

Resolved further, That his Excellency, the Governor, be requested to send a copy of the foregoing resolutions to our Senators and Representatives in Congress.

Read three times in the General Assemby, and ratified 8th January, 1846.

EDWARD B. STANLY,
Speaker of the House of Commons.
BURGESS S. GATHER,
Speaker of the Senate.

The passage of this resolution had the effect which had been anticipated, and it satisfied the Government of the United States that the State of North Carolina, after the expiration of

ten years from the date of the treaty, still preserved her kind parental policy towards this small remnant of the aboriginal inhabitants of the State.

It has already been mentioned that unsuccessful efforts had been made during two Administrations. As soon as President Polk came into office, application was made to him to do justice to the North Carolina Cherokees, and he, following in the footsteps of his predecessors, sent the application to the Indian Office; this, in course of time, was followed by another rejection, from which an appeal was taken to the Secretary of War, Governor Marcy, who referred the question to President Polk. On the 11th of June, 1845, he referred the questions raised by me to the Attorney General for his opinion thereon. During the summer of that year I went north, and obtained the evidence of John F. Schermerhorn, the Commissioner who concluded the treaty of 1835, which established the fact that the North Carolina Cherokees were neither present or represented at the Council in Georgia that concluded the treaty, which was filed in the case.

On the 19th day of September, 1845, the Attorney General gave his opinion thereon, as follows:

"On the 11th of June last, you did me the honor to refer to me a report of the Commissioner of Indian Affairs of the 19th of May, and a reply thereto of Wm. H. Thomas, on behalf of Cherokee Indians, on which you desired my opinion in writing. In a memorandum among the papers transmitted, there are four questions propounded:

"1st. Are the Cherokees remaining in the State of North Carolina and Tennessee entitled, under the 8th and 12th articles of the Cherokee treaty of December, 1835, to $53 33 for their claims for removal and subsistence allowance, which has been paid to the Cherokees in Georgia?

"2d. In the event that the Attorney General should be of opinion that the Cherokees in North Carolina and Tennessee are not entitled to compensation for their claims, &c., whether the grant made by the State of North Carolina to the Cherokee Indians, in the year 1783, vested the fee simple title in the Indians while they continued to reside thereon; and whether, under the provisions of the grant, the fee simple title has not vested exclusively in the Cherokee Indians within its limits?

"3d. Whether the treaty of 1835, made with the Cherokee Indians of Georgia, does or does not legally convey to the United States the lands granted to the North Carolina Indians, by the act of 1783? Whether the power of the Cherokees, as a nation, had or had not ceased to exist at the time the treaty of December, 1835, was concluded, in consequence of the tribe having passed under the dominion of the State?

"4th. Whether the relinquishment of interest in the lands, which the treaty of 1835 purports to convey, is or is not confined to those Cherokees who have and do receive their due portion of the consideration money; and whether the title of those who received no part of the compensation has passed to the United States?

"The first of these involves an inquiry whether, under the treaty of New Echota, those Cherokees who remained in the States of Tennessee and North Carolina are entitled, under the 8th and 12th articles of the treaty, to $53 33 for removal and subsistence allowance.

"This inquiry is embarrassed by the fact that those allowances have been made to Cherokees who have remained in Georgia, by decisions at the War De-

partment, and by the fact of payment being made to others of the tribe who did not emigrate. By the joint resolution of Congress, approved June 15, 1844, the interpretation under which the Georgia Indians were paid appears to have been acted on by the War Department but for a short time, &c.

"In the papers accompanying your communication are several statements furnished by the Commissioner who negotiated the treaty on the part of the United States, and by respectable persons who were privy to the negotiation tending to show that the Indians were assured that those who did not migrate should have the benefit of this pecuniary allowance.

"In its construction, it is said that the language used in treaties with Indians should never be construed to their prejudice." * * * "How the words of the treaty were understood by this unlettered people, rather than their actual meaning, should form the rule of construction.

"According to well-established rules of law, I am of opinion that this evidence is inadmissible to establish a construction of the treaty inconsistent with its provisions. *Whatever may be done by Congress to fulfill expectations thus created*, I am clearly of opinion that the Executive cannot execute the treaty on any such construction.

"The other three questions may be solved into three inquiries: whether the lands in North Carolina belonged to the North Carolina Indians residing upon them. These lands have been sold by the State North Carolina, and are, I presume, in the possession of the purchasers. As the Executive of the United States would have no power to divest those in possession, and the question is one for the Judiciary, I have deemed it unnecessary to embrace my views upon it in this communication. Nor have I deemed it proper to express my opinion on the hard measure which seems to have been dealt out to the North Carolna Indians, whose lands have been sold, while they have received no corresponding benefit. I have examined the question as one of legal construction only, and have no doubt of the correctness of my conclusion in that respect."

JOHN Y. MASON.

This opinion, on the 2d of October, 1845, was approved by the President of the United States, who made the following endorsement thereon: "I concur in opinion with the Attorney General."

The following conclusions are deducible from the foregoing opinion of the Attorney General and President of tne United States:

1. That hard measures had been dealt out the North Carolina Indians, whose land had been sold, for which they had received no corresponding benefit.

2. That if the decision had been made upon the question submitted, as respected the title of the United States to their land, under the treaty of 1835, it would have been that it was defective. For if it had not been believed that the decision, if made, would be as stated, the reason for declining to give it did not exist.

This opinion established a few additional facts favorable to the Indians.

1st. That equity was in favor of construing the treaty as understood by the parties; and that it was left for Congress to make good the promises which induced a submission to the treaty.

2d. That if the promises of the Government were not complied with, the North Carolina Cherokees had a remedy, by instituting a suit in the Supreme Court for the lands granted to them under the act of 1783.

3d. That "hard usage had been dealt out to the North Carolina Cherokees." In this he no doubt had reference to the manner that the fund stipulated to be paid for the cession of the land under the treaty of 1835, had been disposed of without any equivilent to the North Carolina Cherokees.

For the lands owned by the tribe situated west of the Mississippi	$500,000 00
For a permanent national fund	404,000 00
For purposes of education	300,000 00
For orphan's fund	50,000 00
Paid to John and Louis Ross for removal and subsistance of the Cherokees, more than the sum of $53 33, fixed by the 8th article of the treaty of 1832, as chargeable to the fund for these objects	581,346 88
Also, the Government distributed per capita among the Western Cherokees, paid out of the per capita fund,	172,000 00
Making the aggregate sum of	$2,007,346 88
Out of	$5,000,000 00

With this state of facts, when the 12th article of the treaty, as well as the explanatory agreement with the chiefs, provided that the North Carolina Cherokees should receive "their due portion" of the funds, it was not strange that the Attorney General, as well as the President of the United States, should admit that "hard measures had been dealt out to that portion of the tribe." To remedy the injustice that had been done to those Indians, President Polk transmitted the arguments in their favor, accompanied by a map of the lands in North Carolina and Tennessee, claimed by the North Carolina Cherokees, under the grant of 1783, to Congress on the 11th of April, 1846, accompanied also with a recommendation in favor of justice being done to the Indians.

The President's message, as well as the papers relating to the Cherokees, were printed under a resolution of Congress, and are referred to as a proof of the foregoing statement. This lead to the appointment of commissioners, to conclude a new treaty with the Cherokee tribe west, as a supplement to the treaty of 1835. Efforts were made before the commissioners, by General Waddy Thompson, Attorney for the Western Cherokees, to have an article inserted which should deprive the North Carolina Cherokees of their portion of the fund remaining to be distributed per capita. By permission of the President, on the 3d of August, 1846, I filed an argument before the commissioners in favor of the North Carolina Cherokees, and in opposition to the insertion of an article to exclude that portion of the tribe from a share of the small

amount of per capita that remained to be distributed, under the treaty of 1835. The commissioners decided in their favor, and inserted the 10th article to protect their interest.

"*It is expressly argued that nothing in the foregoing treaty contained shall be so construed, as in any manner to take away or abridge any rights or claims of the Cherokees, now residing in the States west of the Mississippi had or may have, under the treaty of* 1835, *and supplement thereto.—(See treaty of* 1846.)

As the last resort application was made to Congress to make provision for the North Carolina Cherokees, in accordance with the treaty of 1835, as understood by both parties at the time it was negotiated, which resulted in the passage of the following act, which bears date 29th July, 1848:

SEC. 4. *Be it enacted, &c.,* "That the Secretary of War cause to be ascertained the number and names of such individuals and families, including each member of every family, of the Cherokee nation of Indians that remained in the State of North Carolina at the time of the ratification of the treaty of Echota, May twenty-three, eighteen hundred and thirty-six, and who have not removed west of the Mississippi, or received commutation for removal and subsistence, and report the same to the Secretary of the Treasury; *whereupon the Secretary of the Treasury shall set apart, out of any moneys in the Treasury not otherwise appropriated, a sum equal to fifty-three dollars and fifty-three cents for each individual ascertained as aforesaid, and that he cause to be paid to every such individual, or his or her legal representatives, interest at the rate of six per cent. per annum on such per capita from the said twenty-third day of May, eighteen hundred and thirty-six, to the time of the passage of this act, and continue annually thereafter the said payment of interest at the rate aforesaid.*

Under the recited act the census was taken, and the aggregate sum of $80,901 51 was set apart in the Treasury as a trust fund for the North Carolina Cherokees.

The foregoing act preparatory to making the payment of interest was referred, on the 19th of January, 1850, to the Hon. Albion K. Parris, Second Comptroller of the Treasury, to settle the construction of the law.

On the 12th of January, 1850, his opinion was given thereon, in which he says, after quoting the law:

"*In case of the death of a person interested in the fund, the legal representative of such person would succeed to his right, and might claim the interest so long as the fund continued; this is in accordance with the language of the 4th section.*

This opinion of the Second Comptroller, under the laws of Congress establishing the Treasury Department, was final, and it was not subject to any change by the Secretary of the Treasury or the President of the United States. (See opinions of the Hon. William Wirt, upon the power of the Comptroller to settle the construction of the acts of Congress, vol. 1, page 624; vol. 4, page 221, of the Opinions of the Attorney General.)

The decision of Judge Parris, as to the construction of the act of July 29, 1848, was approved and adopted by the Secretary of the Treasury, the Hon. Thomas Corwin, as the instruc-

tions to the disbursing officer prove. In the instructions that were issued to C. M. Mitchell, the disbursing agent, under date of July 14, 1851, it is stated:

"*You will be governed by the following general principles:*

"*To all the Indians of lawful age, now living, payment of the respective sums due to each, to be made to the Indians direct.*

"*All sums due to minor children, now deceased, to be paid to the parents, if living.*

"*In cases of deceased wife or husband, the amount due to be paid to the survivor.*

"*In all such instances where the deceased left neither husband nor wife, (as the case may be,) then to be paid to the legal representatives these amounts.*"

Under the instructions the interest due to the North Carolina Cherokees was paid by the agent, and his accounts settled by the accounting officers of the Treasury Department.

It was, in a few years, discovered, that to continue the payment of interest, as provided by the act referred to, for an indefinite period, would be attended with much inconvenience. Hence, preparatory measures were adopted by Congress, in 1855, to pay over the trust fund of the North Carolina Cherokees, provided that they would consent to receive it.

And be it further enacted, "That the Secretary of the Interior is hereby authorized and required to cause to be paid to the North Carolina Cherokees, embraced in the *roll of* John C. Mulloy, or the legal representative of each of them as have died since their enrollment, the *sum of fifty-three dollars and thirty-three cents, respectively, for the expenses of their removal and subsistence, now held in trust by the United States, according to the terms of the 4th section of the act of twenty-ninth July, anno domini eighteen hundred and forty-eight, Provided:* That each and every Indian so receiving such payment, made in full, shall give his assent thereto; *And, provided further*, That the Secretary shall be first satisfied that the State of North Carolina has, before such payment, by some appropriate act, agreed that the said Cherokees may remain permanently in the State; anything in the treaty of eighteen hundred and thirty-five-six to the contrary, notwithstanding."

Since the passage of the recited act, by Congress, the State of North Carolina has not deemed it necessary to legislate on the subject. With her it is a matter of no consequence whether the Government of the United States retains or pays over the fund held in trust for the North Carolina Cherokees. Nor is it probable that her Legislature, after what has already been done, deems it necessary to legislate further on the subject. She has acquiesced in the Cherokee treaties of 1817, 1819, 1835, and 1846, which secured those Indians the right to remain in the State, which, agreeably to the decision of her Supreme Court, as expressed in the case of Euchella *vs.* Welch, those treaties and the rights acquiesced under them were held

to be the paramount law of the land, under the Constitution of the United States "anything in the laws of a State to the contrary, notwithstanding."

And not only the Supreme Court of the State had decided that the effect of those treaties was to confer rights of citizenship on the Cherokees, which could not be abrogated by any act of the State—but the State, instead of opposing these rights, acquiesced under the treaties, and sanctioned their residence in the State. If she had been opposed to those Indians remaining, would she, in 1836, have passed a law for their protection, to extend to all such individuals as remained in the State? Would she, in 1845, have passed a resolution "requesting her Senators and Representatives in Congress" to use their influence in favor of having justice done to those Indians? And would she, at the same session, have passed an act authorizing those Indians residing in Jackson county, which constitutes the principal settlement in the State, to form themselves into an incorporated company, under the seal of the State, to purchase and hold lands for the term of ninety-nine years, under the name of the "Cherokee Company?" And after protecting those Indians for near a quarter of a century, without any attempt on her part to have them molested in any way, it is quite probable that she may not deem further legislation necessary.

Nor is it probable that the State would be willing to receive the trust fund, and incur the expenses incident to distributing the interest, now incurred by the United States, which, including clerk-hire in the Departments, very probably exceeds ten per cent. on the fund. And this must be greatly increased, as the Indians, whose funds were set apart in the Treasury, die; and the small sum to which each individual is entitled, $3,19 has to be divided among their heirs. Scattered, as a large portion of them now are, over a territory not less than three hundred miles in circumference, and besides the difficulty of making payment, in consequence of the smallness of the sum and the great distance they have been separated. There is another of identity, which will give much trouble. Amalgamation has been going on until even a clerk, sent from the Indian Office, has been unable to report whether or not there is enough Indian blood in some families to be considered Indians, as he was unable to distinguish them by color. And even the few full-blood Indians remaining in the country, as the census of 1850 prove, are further advanced in civilization than any tribe west of the Mississippi.

They have among them farmers, shoemakers, blacksmiths, gunsmiths, coopers, chairmakers, wheelwrights, house-carpen-

ters, &c. And the females have learned to card, spin, and the use of the hand-loom, by which they manufacture their clothing. And one of the best churches in the county of Jackson, was built by those Indians. They not only practice the mechanic arts for their own people, but for the whites adjacent to their settlements. They, however, principally live by agriculture, and not only make a support for themselves, but make a surplus which is sold to the whites. A larger portion of these Indians can read the scriptures than can be found among the white population in three-fourths of the States, as shown by the census of 1850. They have their own preachers, who teach them the divine instructions of the Bible, and to worship that Supreme Being, who made the red as well as the white man. Those Indians, enrolled under the act of July 29, 1848, and their descendants, while a portion of them, like all other communities, are very poor in the aggregate, they probably own not less than a quarter of a million of dollars in property, &c., and should any portion of them in future desire to unite with the tribe west, it is quite probable that the sale of their lands east will furnish the means of removing them to the Cherokee country west, in which they have a common interest. But, in addition to the rights that those people have under the treaties and laws, as admitted by the State, which are sufficient to protect them under a writ of habeas corpus against molestation from any quarter, their rights to remain have been reorganized by the Government of the United States, not only in the act of July 29, 1848, but in the decisions of the Executive, for near a quarter of a century. The last decision of the Executive branch of the Government was given by the Hon. John J. Crittenden, when Attorney General of the United States, on a question raised by the Commissioner of Indian Affairs. This opinion bears date 11th April, 1851, in relation to the portion of the tribe then remaining in the States east of the Mississippi river.

Permission was granted to file an argument in defence of the rights of the North Carolina Cherokees. A quotation from it explains the attachment of those people to their native country and their deep regret at the continued indirect invasion of their rights, emanating from the Indian office.

In speaking of the condition of the North Carolina Cherokees, and the country occupied by them, it is stated—

"That country is endeared to those Indians by the graves and sacred relics of their ancestors; the bones of their children, sisters, brothers, fathers, and mothers, lie there; they say, 'We cannot leave them; let us alone in the land of our fathers. Why ask us to remove West? We once owned all the land that could be seen from the tops of our highest mountains; will you not permit us to enjoy in peace the small quantity we have purchased?' They ask,

'Where are our brothers, who were foreed from the mountains of North Carolina? Two-thirds have been buried on the road to Arkansas, and in that sickly country. Where are the Ridges and Boudinots, who were promised the protection of the United States? Have they not been massacreed? Their blood cries from the ground. Where are the midnight assassins? Have they not been pardoned by the Cherokee Government, without trial, contrary to both law and treaties? Will you then ask us to remove, and join a Government too weak and too unjust to protect us, and leave a State where our lives, liberties, and property, are secured?—where our rights to remain are guarantied by solemn treaties?'"

Fortunate for the Indians in the office of the Attorney General was found too high a regard for justice, and the sacred obligations of treaties to favor the policy proposed by the reputed Father of the red man of the forest, as the opinion demonstrates:

"Question fourth: 'If any of the Cherokees who have not removed west of the Mississippi river are entitled, may they be required to emigrate, as a condition precedent to their being paid?' Answer: The treaty of 1835, article twelve, conceded the rights of individuals, and families of Cherokees, who were averse to the removal to the Cherokee country west of the Mississippi, to remain east, and to receive their due portions of the money to be distributed *per capita*. The treaty of 1846, article ten, recognised these claims of the Cherokees then, at the date of the treaty, residing east of the Mississippi river. On this subject I have hereinbefore expressed my views. To require these Indians, so residing east of the river Mississippi at the date of the treaty of August, 1846, to remove to the Cherokee country west, as a condition precedent to their being paid their dividend *per capita* of the balance of the purchase money for the lands east of the Mississippi river, ceded by their nation to the United States, would be without any authority of law, and a breach of the faith of the treaties of 1835 and 1846, as I think and firmly believe.

"Very respectfully, yours, &c.,

JOHN J. CRITTENDEN.

Since the foregoing opinion was given, the policy of the Government of the United States has undergone a change, and instead of moving the Indian tribes from place to place as formerly, to keep them from coming in contact with the white population, the policy of the Government is, as it should be, to encourage the Indians in the pursuits of agriculture and civilized life in the country they occupy. To complete this policy the Indian territory if formed into a state where the Indian tribes could enjoy all the political and social rights of the white race, would hold out a strong inducement for the scattering individuals of the tribes remaining in the states to join their brethren west. But even supposing that to take place, and that any portion of the Cherokees remaining east should desire to go west, it would be a voluntary removal of the Indians, with which all their friends would be satisfied and the Indians themselves could not justly complain.

In conclusion, I beg leave to refer the Committee to the objects designed to be effected by the passage of a law embracing the principles contained in the resolution now under consideration.

1st. A fixed period, the 29th of July, will be established to estimate the interest due the North Carolina Cherokees. This, it is presumed, will lead to some regularity in the payment of interest upon so much of the trust funds as may remain in the Treasury on that day.

Hitherto, for more than half the time since the fund was set apart in the Treasury, great irregularity has prevailed in the payment of the interest due under the act of July 29, 1848. And at this time there is probably not less than eleven thousand dollars of the interest due unpaid. The passage of a law fixing a time of payment, and calculating interest upon what remains unpaid at that time, would tend to prevent those continued delays in making payment, which are no doubt measurably caused by a desire to avoid the trouble of preparing the pay roll, and making payment of those small sums to the great numbers of the legal representatives. Because it would be a slander on the Government to suppose that the payment of interest was withheld with a view of gradually embezzling any part of the funds held in trust for the Indian tribes, or the interest due thereon.

After teaching the Indians to look up to the head of the Indian Bureau as Father, to the Secretary of Interior as Great Father, and to the President of the United States as Great Grand Father, to attempt, under any pretext, to set up a claim to either their trust funds or interest, would tend to destroy the confidence of all the tribes in the Government of the United States, and the relation of Father, Great Father, and Great Grand Father would soon change, and their influence over the Indian tribes cease to exist, and they would justly become the enemies, instead of friends, of the Government.

2d. The Secretary to pay over the principal and interest that has accrued due to the deceased Cherokees, embraced in the census roll, to their legal representatives. And in case of their having no lawful heirs, to be equally divided among the survivors on the census roll, or their legal representatives. This would obviate the difficulty of making payments in cases where the sum would be too small for the claimants to come to the agent after it, and too expensive for the Government to send it to them.

3d. By providing that the distribution of interest shall be in accordance with the laws of the State, the uncertainty of Indian customs, in the distribution of estates, would be avoided, which, since those Indians have abandoned polygamy, becomes important in the distribution of estates, and by confining it to those remaining in the State, and in case a family becomes

extinct, by dividing the funds among the survivors, the proper persons will receive it for whom it was intended.

But if the Government prefers to retain the fund to paying it over, all that is asked on the part of the Indians is, that arrangements shall be made to pay over the arrearages of interest due, and, in future, provide that interest shall be paid on all the money that remains unpaid on the 29th of July in each year. The Government cannot reasonably complain of paying the interest provided by law for the use of the fund held as trustee for the Indians; and when she fails to pay the interest, to pay over the principal. Equity and good faith require that one should be done without unreasonable delay. And as to the remainder of the trust fund, the Secretary of the Interior is already authorized to pay it over, under the act of 1855, when he shall be satisfied that North Carolina has assented to the Indians remaining permanently in the State.

Respectfully submitted,

WM. H. THOMAS.